

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,)
Plaintiff,)
v.)
MARCOS MARTINEZ,)
Defendant.)

FILED
Crim. No. 1:15-cr-00533-JB
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

Hon. Judge Browning FEB 22 2022

MICHELL R. ELFERS
CLERK

MOTION FOR JUDICIAL RECOMMENDATION OF MAXIMUM
(12 MONTHS) PLACEMENT IN RESIDENTIAL REENTRY CENTER

NOW COMES Defendant Marcos Martinez ("Martinez"), acting pro se, and respectfully moves this Honorable Court for a judicial recommendation to the Federal Bureau of Prisons ("BOP") that Martinez receive maximum placement, i.e., 12 months, in a BOP-approved residential re-entry center ("RRC").

In support of this motion Martinez submits the following.

I.

Background

On February 18, 2015, a federal grand jury empaneled in the United States District Court for the District of New Mexico returned a seven-count indictment against Martinez and two co-defendants—Marcos Tapia and Nancy Tapia—in which Martinez was charged with conspiracy to possess with intent to distribute cocaine, cocaine base, and heroin, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C)(Count One); possession with intent to distribute 280 grams or more of cocaine base, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(A)(Count Two); possession with intent to distribute 500 grams or more of cocaine, in violation of

21 U.S.C. §§ 841(a)(1) and (b)(1)(b)(Count Three); possession with intent to deliver heroin, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C)(Count Four); and being a felon in possession of two firearms, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2) (Count Seven). (Doc. 15.)

On July 6, 2015, Martinez entered a guilty plea as to Counts I, II, III, and VII. See Indictment Plea Agreement, filed on July 6, 2015. (Doc. 60.)

On December 17, 2017, the Court held a sentencing hearing (Doc. 91), which the Court opened by informing the parties that new charging documents, as well as an updated PSR, needed to be filed, because, while the Indictment's Count III charged a violation of 21 U.S.C. § 841(b)(1)(B), Martinez had pled guilty to a violation of 21 U.S.C. § 841(b)(1)(C), based on subsequent laboratory reports which revealed that Martinez possessed less than 500 grams of cocaine when law enforcement searched his shop on January 23, 2015.

On February 25, 2016, the Government filed an Information re-charging the offenses alleged in the Indictment's Counts I, II, and VII, and also charging that Martinez possessed with intent to distribute a detectable amount of cocaine, a lesser-included offense of the Indictment's Count III. (Doc. 103.)

On the same day, pursuant to a written plea agreement, Martinez pled guilty to the offenses charged in the Information. See Information Plea Agreement (Doc. 106).

On February 14, 2017, Martinez was sentenced principally to 120 months' imprisonment. He did not appeal.

II.
Discussion

"As amended by the Second Chance Act, 18 U.S.C. § 3621(c)(1) provides that the BOP 'shall, to the extent practicable, ensure that a prisoner serving a term of imprisonment spends a portion of the final months of that term [not to exceed 12 months] under conditions that will afford that prisoner a reasonable opportunity to adjust to and prepare for reentry of that prisoner into the community.'" United States v. McHone, 2020 U.S. Dist. LEXIS 21465 (D.Kan. 2020)(quoting 18 U.S.C. § 3621(c)(1)). In determining how much RRC placement time to award a particular inmate, the BOP considers, among other factors, any statement made by the Court that imposed the sentence. See 18 U.S.C. § 3621(b)(4). However, any recommendation made by a court to the BOP regarding the length of a particular prisoner's RRC placement is just that, a recommendation. It is not binding upon the BOP. See United States v. Ceballos, 671 F.3d 852, 855 (9th Cir. 2011).

Against this legal backdrop, Martinez respectfully moves this Honorable Court to recommend to the BOP that Martinez receive maximum RRC placement time (i.e., 12 months). In support of this request Martinez represents to the Court that he has agreed to participate in an inmate-initiated and -facilitated program called the Twelve-for-Twelve program, in which inmates agree to perform twelve months of volunteer work at an animal shelter in their area in exchange for the program facilitators drafting a petition in the participating prisoner's sentencing Court requesting a 12-month RRC placement recommendation. As part of this program, Martinez

has agreed to perform twelve months of volunteer work. But more importantly, the Bernalillo County Animal Care and Resource Center in Albuquerque, New Mexico, has agreed to participate in the Twelve-for-Twelve program by permitting Martinez to volunteer there for at least one year. (The Court and/or the Government can verify this fact by contacting Candice Marie Sanchez, the Bernalillo County Animal Care and Resource Center's Outreach Manager, at (505)-314-0153 or by email at: cansanchez@bernco.gov.)

Again, Martinez is only asking the Court for a recommendation for twelve months RRC placement. It will ultimately be up to the BOP whether or not the recommendation is followed. However, that said, a judicial recommendation, coupled with Martinez's participation in the Twelve-for-Twelve program, would almost certainly result in Martinez receiving 12 months' RRC placement.

III.
Conclusion

Twelve months' RRC placement would dramatically increase Martinez's chances of a successful reintegration into the community. But it would also dramatically help countless animals at the above-referenced animal shelter.

WHEREFORE, in light of the above, Martinez prays that this motion will be granted.

Respectfully submitted,

01/31/2022

Date



Marcos Martinez - #79917-051
U.S. Penitentiary Canaan
P.O. Box 300
Waymart, Pennsylvania 18472

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the foregoing was sent, via first-class prepaid mail, this 31st day of February, 2022, to the following counsel for the Government:

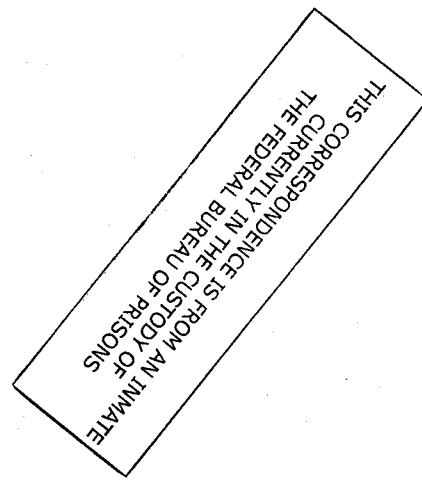
Mr. James D. Tierney
Assistant United States Attorney
District of New Mexico
P.O. Box 607
Albuquerque, New Mexico 87103



Marcos Martinez

Marcos Martinez
Reg. No. 79917-051
United States Penitentiary
USP Canaan
P.O. Box 300
Waymart, PA 18472

LEGAL MAIL



Office of the Clerk
United States District Court
District of New Mexico
333 Lomas Boulevard, NW, Suite 270
Albuquerque, New Mexico

87102

RECEIVED
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

FEB 22 2022

MITCHELL R. ELFERS
CLERK

